

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

IN RE:

GREAT LAKES AG, LLC,

Debtor.

Case No. 10-09519-AJM-11  
(Chapter 11)  
Hon. Anthony J. Metz

**MOTION OF PNCEF, LLC FOR RELIEF FROM STAY**

PNCEF, LLC, formerly known as National City Commercial Capital Company, LLC ("PNCEF"), by its attorneys, Plunkett Cooney, moves pursuant to 11 U.S.C. §362(d) for relief from the automatic stay. This Motion is based upon the following:

1. Debtor filed a petition for relief under Chapter 11 of the Bankruptcy Code on June 24, 2010 ("Petition Date"). Debtor is a Michigan limited liability company. The Debtor and its principal, Willy van Bakel, are related to Vreba-Hoff Dairy Development, which has brought Dutch dairy farmers to the United States and is facing lawsuits from farmers, lenders and suppliers alleging that millions of dollars are owed and funds were misused. See Lauren Etter, Plenty of Spilled Milk to Cry Over for Dairymen Lured to U.S., Wall St. J., February 16, 2010.

2. This Motion is classified as a core proceeding which this Court has the power to hear pursuant to 28 U.S.C. §157(b)(2)(G).

3. On or about September 12, 2007, PNCEF and Debtor entered into a Master Lease Agreement, as amended and supplemented ("Lease"), in regard to certain equipment. The equipment and other property described in and covered under the Lease (and as further described in the financing statements attached as Exhibit B to this Motion) are referred to as the "Equipment." A copy of the Lease is attached as **Exhibit A**.

4. Financing statements have been filed with the Michigan Secretary of State as a precaution if the transactions are deemed to be transactions other than a lease. Copies of the financing statements dated September 17, 2007, October 22, 2007, November 6, 2007, November 19, 2007, December 31, 2007, March 26, 2008, May 8, 2008, May 27, 2008, and July 3, 2008, are attached as **Exhibit B**.

5. Debtor's last payment to PNCEF was on May 2, 2009. Debtor defaulted under the Lease as it failed to remit to PNCEF lease payments totaling \$889,208.04 by February 18, 2010.

6. On or about March 4, 2010, PNCEF filed a Complaint in the Lenawee County (Michigan) Circuit Court against Debtor, Willy van Bakel, Dirk Z. Maat, and Vreba-Hoff Dairy Development, L.L.C for a money judgment and possession of the Equipment. A copy of the Complaint, without exhibits, is attached as **Exhibit C**.

7. On or about March 12, 2010, Debtor, PNCEF, Willy van Bakel, Dirk Z. Maat, and Vreba-Hoff Dairy Development, L.L.C. entered into a Settlement Agreement. A copy of the Settlement Agreement is attached as **Exhibit D**.

8. Debtor was in default under the Settlement Agreement for among other things, failing to make any of the payments required under the Settlement Agreement. Moreover, PNCEF discovered that Debtor had converted some of the Equipment by selling it to Green Dairy, LLC for \$375,034.00 on or about January 30, 2008, without PNCEF's consent and without turning over the sale proceeds to PNCEF. Copies of documents evidencing the unauthorized transfer of some of the Equipment are attached as **Exhibit E**.

9. Pursuant to the Settlement Agreement, PNCEF obtained entry on June 1, 2010 of a Consent Judgment against Debtor, Willy van Bakel, Dirk Z. Maat, and Vreba-Hoff Dairy Development, L.L.C ("Judgment"). The Judgment was final and non-appealable on June 22,

2010, prior to the Petition Date. Michigan Court Rule 7.204(A)(1)(a). The Judgment grants PNCEF a money judgment, possession of the Equipment, and authority to sell the Equipment. A copy of the Judgment is attached as **Exhibit F**.

10. In accordance with the Judgment, PNCEF sent trucks to repossess the Equipment on June 24, 2010. That same morning, Debtor filed its Chapter 11 petition and PNCEF immediately ceased its repossession efforts as a result of the automatic stay.

11. As of the Petition Date, not less than \$4,245,344.24 was owed under the Judgment. As provided in the Judgment, which has res judicata effect, the value of the Equipment is less than the amount owing to PNCEF.

12. The Lease was terminated pre-petition. PNCEF provided notice of termination of the Lease in the Complaint filed on or about March 4, 2010. The Lease then was superseded by the final and non-appealable Judgment. If a contract has been terminated pre-petition, there is nothing left for the debtor to assume. Moody v. Amoco Oil Co., 734 F.2d 1200, 1212 (7<sup>th</sup> Cir. 1984).

13. Cause to lift the automatic stay exists under Section 362(d)(1) of the Bankruptcy Code. The Equipment is not property of the estate under 11 U.S.C. §541 subject to the automatic stay. The Lease was terminated pre-petition and superseded by the final Judgment. Under Moody, supra, there is nothing left for the Debtor to assume and a contract terminated pre-petition cannot be property of the estate. Moreover, PNCEF has title and ownership of the Equipment pursuant to the Lease and the Judgment so the Equipment is not property of the estate.

14. Michigan Compiled Laws 440.9601(1) and (6) permit a creditor to exercise rights outside of Article 9 of the Uniform Commercial Code. By reducing its claim to a final Judgment, PNCEF is not required to comply with the requirements for non-judicial collateral

dispositions in Article 9. Therefore, by the terms of the final Judgment, Debtor has no redemption rights in the Equipment if the Lease is deemed a transaction other than a lease.

15. Assuming that the Equipment is property of the estate and the Lease is deemed a transaction other than a lease, cause to lift the automatic stay exists under Section 362(d)(1) because PNCEF is not adequately protected. PNCEF is informed and believes that the value of the Equipment is continuously diminishing. PNCEF's interest in such Equipment is not adequately protected because periodic payments are not being made to PNCEF post-petition.

16. Alternatively, cause exists to lift the automatic stay pursuant to Section 362(d)(2). Section 362(d)(2)(A) is satisfied because the Debtor has no equity in the Equipment. The Judgment provides that “the value of the Equipment is less than the judgment amount.”

17. Section 362(d)(2)(B) is satisfied because the Equipment is not necessary for an effective reorganization. Property in which the Debtor has no interest is not necessary for an effective reorganization. It is the Debtor's burden to establish that the Equipment is necessary to an effective reorganization. 11 U.S.C. §362 (g). “What this requires is not merely a showing that if there is conceivably to be an effective reorganization, this property will be needed for it; but that the property is essential for an effective reorganization that is *in prospect*. This means ... that there must be a reasonable possibility of a successful reorganization within a reasonable time.” United States Association of Texas v. Timbers of Inwood Forest Associates, Ltd., 484 U.S. 365, 375-76 (1988). The Debtor has expressed its hope to PNCEF since May, 2009 that it could obtain financing from some source in the world. Given that the proffered financing from a source inside or outside of the United States has not been consummated after the passage of over one year, it is unlikely that it could now be obtained to fund an effective reorganization within a reasonable time hereafter.

PNCEF, LLC requests that this Court enter an Order:

- A. Granting it relief from the automatic stay provisions of the Bankruptcy Code so that PNCEF may proceed with its state law remedies.
- B. Prohibiting the Debtor from using, leasing or selling the Equipment in the absence of adequate protection of PNCEF's interest in the Equipment; and
- C. Granting such other and further relief as is just and proper.

PLUNKETT COONEY  
Attorneys for PNCEF, LLC

Dated: August 11, 2010

By: /s/ Brandt N. Hardy  
Brandt N. Hardy (Attorney No. 8101-49)  
300 N. Meridian St., Suite 990  
Indianapolis, IN 46204  
Telephone: (317) 964-2732  
FAX: (317) 964-2744  
Email: [bhardy@plunkettcooney.com](mailto:bhardy@plunkettcooney.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on August 11, 2010, a copy of this document was served by the Court's electronic filing system to the following parties or counsel of record, as well as any other parties or counsel of record in this matter:

Jeffrey M. Hester  
TUCKER HESTER, LLC  
[jeff@tucker-hester.com](mailto:jeff@tucker-hester.com)

U.S. Trustee  
[ustpreionlo.in.ecf@usdoj.com](mailto:ustpreionlo.in.ecf@usdoj.com)

Joseph F. McGonigal  
Office of U.S. Trustee  
[joe.mcgonigal@usdoj.gov](mailto:joe.mcgonigal@usdoj.gov)

KC Cohen  
[kc@esoft-legal.com](mailto:kc@esoft-legal.com)

I further certify that on August 11, 2010, a copy of this document was served by regular first-class mail, postage prepaid, to the following parties at their respective addresses:

Great Lakes AG, LLC  
1290 N. Shoop Avenue, Suite 140  
Wauseon, OH 43567

Homier & Sons, Inc.  
119 N. Hyman Street  
P.O. Box 429  
Payne, OH 45880

Vreba Hoff Dairy Development  
1290 N. Shoop Ave., Suite 140  
Wauseon, OH 43567

Crop 1 Insurance Co.  
5400 University Avenue  
West Des Moines, IA 50266

Crop Production Services/  
Saline Farm Cen  
9325 W. Michigan Avenue  
Saline, MI 48176

K & L Tractor Sales, Inc.  
1737 ST RT 49  
Fort Recovery, OH 45846

Internal Revenue Service  
P.O. Box 21126  
Philadelphia, PA 19114

Manders Equipment, LLC  
11190 Range Line Road  
Weston, OH 43569

Briskey Brothers Construction, Inc.  
8360 N. Adrian Highway  
P.O. Box 426  
Tecumseh, MI 49286

Crop Production Services/ Morceni  
209 E. Coomer Street  
Morenci, MI 49256

Midwest Ag Investments, LLC  
1290 N. Shoop Ave., Suite 140  
Wauseon, OH 43567

Ohio CAT  
3993 E. Royalton Road  
Cleveland, OH 44147

Shrader Tire & Oil, Inc.  
2045-51 Sylvania Avenue  
P.O. Box 5407  
Toledo, OH 43613

Darby Ready Mix Concrete Co.  
11200 Herold Highway  
Addison, MI 49220

Eric Bleich  
13340 Stewart Road  
Hudson, MI 49247

Arrow Uniform-Taylor, LLC  
6400 Monroe Boulevard  
Taylor, MI 48180

Briskey Farms  
8360 N. Adrian Highway  
P.O. Box 426  
Tecumseh, MI 49286

CNH Capital  
P.O. Box 1083  
Evansville, IN 47706-1083

Purdy Tractor & Equipment, Inc.  
3380 Hudson Road  
P.O. Box 772  
Hillsdale, MI 49242

Vesco Oil Corporation  
P.O. Box 525  
Southfield, MI 48037-0525

Weinlander Fitzhugh, CPA  
1600 Center Avenue  
P.O. Box 775  
Bay City, MI 48707

Caterpillar Financial Services Corp.  
2120 West End Avenue  
Nashville, TN 37203-0001

/s/ Brandt N. Hardy

PLUNKETT COONEY  
300 N. Meridian St., Suite 990  
Indianapolis, IN 46204  
Telephone: (317) 964-2732  
FAX: (317) 964-2744  
Email: [bhardy@plunkettcooney.com](mailto:bhardy@plunkettcooney.com)

Open.03654.92541.5002080-1